

Decision 04-07-030 July 8, 2004

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Rules to Ensure Reliable, Long-Term
Supplies of Natural Gas to California.

Rulemaking 04-01-025
(Filed January 22, 2004)

OPINION REGARDING APPEAL OF CATEGORIZATION

Summary

This decision addresses the “Appeal of Quasi-Legislative Categorization” (appeal of categorization) that was filed by the Ratepayers for Affordable Clean Energy (RACE) on June 28, 2004. RACE challenges the categorization of Phase I of this proceeding as a quasi-legislative proceeding. Today’s decision denies RACE’s appeal of categorization.

Background

When this rulemaking was initiated on January 22, 2004, the Commission preliminarily determined the category of this proceeding to be quasi-legislative. The “Scoping Memo and Ruling of the Assigned Commissioners for Phase I” (Scoping Memo), which was issued on June 18, 2004, confirmed this preliminary determination and formally categorized this proceeding as quasi-legislative.

On June 28, 2004, RACE filed its timely appeal of categorization. Pacific Gas and Electric Company filed a response in opposition to RACE’s appeal of categorization.

RACE's Position

RACE contends that Phase I of this proceeding should be categorized as ratesetting instead of quasi-legislative. RACE makes three arguments as to why the categorization should be changed.

RACE's first argument is that there is a factual dispute over the question of how much natural gas California needs, and that this dispute "will have a direct impact on the rates and the ratesetting process, including determining who will bear the costs of interconnection and system expansion costs." (RACE Appeal of Categorization, p. 2.)

The second argument of RACE is that the Commission in Phase I needs to evaluate whether additional natural gas supplies, in the form of LNG, will benefit California. RACE contends that this evaluation needs to take place before the Commission puts LNG contracts and LNG connection costs into ratebase.

RACE's third argument is that the proposed roll-in of the LNG connection costs for Otay Mesa will lock core customers of Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) into new costs, even though RACE states that all of the output from the LNG terminal in Baja California is expected to remain in Baja California by 2015.

Discussion

The June 18, 2004 Scoping Memo confirmed that Phase I of this proceeding should be categorized as quasi-legislative. The Assigned Commissioners recognized in the Scoping Memo that some of the parties believe that certain issues will require evidentiary hearings, and that not all of the issues raised as within the scope of Phase I are likely to be fully resolved by the Commission in the Phase I decision. (Scoping Memo, pp. 6, 9.) Instead, "the Phase I decision will determine what policy issues should be addressed immediately and what

other issues may require separate proceedings or be handled at a later date in this proceeding.” (*Id.*, p. 9.)

RACE has previously sought to schedule evidentiary hearings in this proceeding through its March 9, 2004 motion to modify the schedule. RACE’s motion to modify the schedule was denied in the March 18, 2004 ruling of the assigned administrative law judges (ALJs). In denying RACE’s motion, the ruling relied on Rules 14.1 and 14.2. Rule 14.1 provides that a “Rulemaking is a formal Commission proceeding in which written proposals, comments, or exceptions are used instead of evidentiary hearings.” Rule 14.2 provides in part that the Commission may elect to apply a rulemaking to a proceeding “to establish rules, regulations, and guidelines for a class of public utilities or other regulated entities.”

Rules 14.1 and 14.2 are consistent with Pub. Util. Code § 1701.1(c). A quasi-legislative proceeding is defined in that subdivision as “cases that establish policy, including, but not limited to, rulemakings and investigations which may establish rules affecting an entire industry.” In contrast, a ratesetting proceeding is defined in that subdivision as “cases in which rates are established for a specific company, including, but not limited to, general rate cases, performance-based ratemaking, and other ratesetting mechanisms.”

RACE’s three arguments as to why Phase I should be re-categorized assume that the roll-in and system integration proposals of SoCalGas and SDG&E will be approved in Phase I, and that customers’ rates will be affected. Since RACE contends that hearings are needed on these issues, RACE asserts that Phase I should be categorized as ratesetting.

The Scoping Memo noted “that certain proposals or issues raised by the parties may have to be litigated in a separate proceeding or in a later portion of

this proceeding,” and that if the Commission decides in the Phase I decision that certain issues should be “deferred to another proceeding or handled at a later time in this proceeding, those issues may be recategorized at a later date in accordance with Rule 6.1(b).” (Scoping Memo, pp. 6, 9.) Since the Phase I decision will only address policy issues, and is not establishing rates for a specific company, the categorization of Phase I of this proceeding as a quasi-legislative proceeding, as defined in Pub. Util. Code § 1701.1(c)(1) is affirmed. Accordingly, RACE’s appeal of categorization is denied.

Waiver of Comments

Pub. Util. Code § 1701.1(a) provides in pertinent part that the Commission “shall render its decision regarding” the appeal of categorization “within 30 days.” Due to this statutory provision, the Commission must act at the July 8, 2004 meeting. Balancing the deadline set by the statute, against the 30-day period for comment and review, public necessity requires that the comment period be waived. In accordance with Pub. Util. Code § 311(g)(3) and Rule 77.7(f)(9), the public review and comment period on this decision shall be waived.

Assignment of Proceeding

Michael R. Peevey and Susan P. Kennedy are the Assigned Commissioners, and David K. Fukutome and John S. Wong are the assigned ALJs.

Findings of Fact

1. RACE’s appeal of categorization challenges the Scoping Memo’s categorization of Phase I of this proceeding as a quasi-legislative proceeding.

2. A quasi-legislative proceeding is defined as a case that establishes policy in a rulemaking or investigation that may establish rules affecting an entire industry.

3. A ratesetting proceeding is defined as a case in which rates are established for a specific company.

4. The Phase I decision will address policy issues.

Conclusions of Law

1. Rules 14.1 and 14.2 are consistent with the definition of quasi-legislative as defined in Pub. Util. Code § 1701.1(c).

2. Since the Phase I decision will only address policy issues, and will not establish rates for a specific company, the categorization of Phase I as quasi-legislative is affirmed, and RACE's appeal of categorization should be denied.

3. This matter was added to the Commission's July 8, 2004 meeting pursuant to Government Code § 11125.3 and Pub. Util. Code § 306(b).

4. In accordance with Pub. Util. Code § 311(g)(3) and Rule 77.7(f)(9), the public review and comment period on this decision is waived.

O R D E R

IT IS ORDERED that the June 28, 2004 “Appeal of Quasi-Legislative Categorization,” filed by the Ratepayers for Affordable Clean Energy, seeking to change the categorization of Phase I of this proceeding from quasi-legislative to ratesetting, is denied.

This order is effective today.

Dated July 8, 2004, at San Francisco, California.

MICHAEL R. PEEVEY
President
CARL W. WOOD
GEOFFREY F. BROWN
SUSAN P. KENNEDY
Commissioners

I reserve the right to file a concurrence.

/s/ CARL W. WOOD
Commissioner

I reserve the right to file a dissent.

/s/ LORETTA M. LYNCH
Commissioner